

22-7-103 Trustee powers to convert trusts -- Requirements to make unitrust election.

- (1) A trustee, other than an interested trustee, or, when two or more persons are acting as trustee, a majority of the trustees who are not interested trustees may, in the trustee's sole discretion and without the approval of the district court:
 - (a) elect to release the power to adjust described in Section 22-3-104 and to convert an income trust to a total return unitrust;
 - (b) reconvert a total return unitrust to an income trust and reinstate the power to adjust described in Section 22-3-104; or
 - (c) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the trustee adopts a written policy for the trust providing that:
 - (i) in the case of a trust administered as an income trust, future distributions from the trust will be unitrust amounts rather than net income;
 - (ii) in the case of a trust administered as a total return unitrust, future distributions from the trust will be net income rather than unitrust amounts; or
 - (iii) the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.
- (2) The trustee shall mail notice of the proposed action to the settlor of the trust, if the settlor is living, and to all adult qualified beneficiaries, as defined in Section 75-7-103, who, on the date of the unitrust conversion, are current distributees or permissible distributees of trust income or principal, or would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date, assuming nonexercise of all powers of appointment.
- (3) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.
- (4) The trustee's written notice of the trustee's intention to take the proposed action shall include:
 - (a) the name and mailing address of the trustee;
 - (b) the name and telephone number of a person who may be contacted for additional information;
 - (c) a description of the action proposed to be taken and an explanation of the reasons for the action;
 - (d) a copy of the trustee's written policy described in Subsection (1)(c);
 - (e) the time within which objections to the proposed action can be made, which shall be at least 30 days from the mailing of the notice of proposed action; and
 - (f) the date on or after which the proposed action may be taken or is effective.
- (5) A beneficiary may object to the proposed action by mailing a written objection to the trustee stating the objection and the basis or reason for the objection at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.
- (6) If the trustee receives a written objection stating the basis or reason for the objection within the applicable time period, and within 60 days the objecting beneficiary does not subsequently consent in writing, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied.
- (7) A beneficiary who does not object is not estopped from opposing the proposed action in the proceeding.
- (8) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the proposed action and the reasons for the decision. The trustee's decision not to implement the proposed action may not give rise to liability to any current or future beneficiary.

Enacted by Chapter 244, 2013 General Session